

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
OXFORD DIVISION**

MICHAEL HOLLINS

PLAINTIFF

VS.

CAUSE NO. 3:16-CV-023-MPM-JMV

**CITY OF SENATOBIA, CHIEF STEVE HOLTZ, IN HIS
OFFICIAL CAPACITY, OFFICER JOHN GRACE, IN HIS
INDIVIDUAL AND OFFICIAL CAPACITY, OFFICER RODNEY
BROWN, IN HIS INDIVIDUAL AND OFFICIAL
CAPACITY, OFFICER JAMES MCDONALD, IN HIS
INDIVIDUAL AND OFFICIAL CAPACITY, AND
LIEUTENANT “JOE” BARROW, IN HIS INDIVIDUAL
AND OFFICIAL CAPACITY**

DEFENDANTS

BRIEF IN SUPPORT OF DEFENDANTS’ MOTION FOR YOUNGER ABSTENTION

Defendants City of Senatobia, Chief Steve Holtz, in his Individual and Official Capacity, Officer John Grace, in his Individual and Official Capacity, Officer Rodney Brown, in his Individual and Official Capacity, Officer James McDonald, in his Individual and Official Capacity, and Lieutenant “Joe” Barrow, in his Individual and Official Capacity (referred to herein as “Municipal Defendants”) move for the case to be dismissed without prejudice pursuant to *Younger* Abstention.

I. Background

Plaintiff Michael Hollins has filed a complaint against Municipal Defendants alleging state and federal law claims in his Amended Complaint [**Doc. 27**]. The suit arises from a disturbance call that was called in from the local Huddle House in Senatobia, MS that Plaintiff was involved in on March 8, 2015. There are currently misdemeanor charges pending in the Municipal Court of Senatobia, MS due to this incident against the Plaintiff. The purported basis for Plaintiff’s claims against Municipal Defendants relate to his arrest on March 8, 2015 in connection with affidavits of arrest sworn against him for retaliation against a public servant or witness, disorderly conduct,

possession of a controlled substance and resisting arrest. Plaintiff has sued Municipal Defendants for various alleged constitutional violations relating to his arrest on the pending criminal charges. [Doc. 27].

Previously an Order [Doc. 32] was entered by Magistrate Judge Jane M. Virden temporarily staying the proceeding until the earlier of the disposition of the criminal action or sixty (60) days from the entry of said Order which was dated July 26, 2016.

At present, Plaintiff's criminal charges have not been resolved but were previously scheduled before the Municipal Court of Senatobia, Mississippi on August 18, 2016. However, according to the prosecutor the Plaintiff failed to show up for court on that date. Apparently, new criminal counsel was obtained by the Plaintiff and pursuant to a request for a continuance from a September 8, 2016, court date, court is now set for October 20, 2016. (See Exhibit "A" attached to the Motion which is a letter from the office of Tommy Defer confirming said continuance.). Given the unresolved nature of the criminal charges, Municipal Defendants move for the case to be dismissed without prejudice pursuant to *Younger* Abstention.

II. Caselaw and Analysis

Younger v. Harris, 401 U.S. 37, 27 L. Ed. 2d 669, 91 S.Ct. 746 (1961), requires abstention when a pending state criminal prosecution is ongoing. *Younger* further requires abstention if a state proceeding implicates important state interests and provides an adequate forum to raise the federal claims. In *Younger*, the Supreme Court held that federal court, with valid subject-matter jurisdiction, was nonetheless prohibited from enjoining a state criminal proceeding without a valid showing of "extraordinary circumstances" that would warrant federal intervention. *Id.*, 401 U.S. 37, 45, 53-53. The Court based its ruling upon considerations of equity and comity. *Id.* at 43-44. The Court explained, Courts of equity should not act....when the moving party has an adequate remedy at law

and will not suffer irreparable injury if denied equitable relief...this underlying reason....is reinforced by an even more vital consideration, the notion of ‘comity,’ that is, a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways. *Id.* and *Lawrence v. McCarthy*, 344 F.3d 467, 471 (5th Cir. 2003).

Taking these principles into account and recognizing the Plaintiff’s own selection of this venue, we respectfully submit that this Court is well withing its discretion to dismiss the later-filed civil action without prejudice so that the criminal charges arising from the very same incident are fully adjudicated.

WHEREFORE, PREMISES CONSIDERED, Municipal Defendants move for the case to be dismissed without prejudice pursuant to *Younger* Abstention.

RESPECTFULLY SUBMITTED this the 30th day of September, 2016.

/s/Mary McKay Lasker

Mary McKay Lasker, MS Bar No. 100785

Daniel J. Griffith, MS Bar No. 8366

Attorneys for Defendants, City of Senatobia,
Chief Steve Holtz, in his Individual and
Official Capacity, Officer John Grace, in his
Individual and official Capacity, Officer
Rodney Brown, in his Individual and Official
Capacity, Officer James McDonald, in his
Individual and Official Capacity, and
Lieutenant “Joe” Barrow, in his Individual and
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CERTIFICATE OF SERVICE

I, the undersigned of Jacks, Griffith, Luciano, P.A. hereby certify that on this day, I electronically filed the foregoing with the Clerk of the Court using the ECF system which gave notification of such filing to the following counsel of record:

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This the 30th day of September, 2016.

/s/Mary McKay Lasker
OF COUNSEL